

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAMEN S. BACHMAN,

Petitioner,

v.

PAT GLEBE,

Respondent.

CASE NO. C10-840-MJP-JPD

REPORT AND RECOMMENDATION

Petitioner is a state prisoner who is currently incarcerated at the Stafford Creek Corrections Center in Aberdeen, Washington. He has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 seeking relief from his 2003 Whatcom County Superior Court judgment and sentence. Petitioner acknowledges in his petition, and this Court's records confirm, that petitioner previously filed a federal habeas petition challenging the same 2003 Whatcom County judgment. (*See* C07-136-JCC.) That petition was dismissed with prejudice on August 10, 2007. (*See id.*, Dkt. Nos. 16, 17 and 18.) The instant petition is therefore a second or successive one.

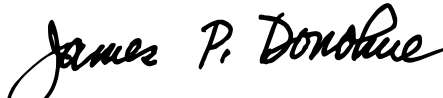
By statute, this Court is without jurisdiction to consider a second or successive habeas petition until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28 U.S.C. § 2244(b)(3)(A); Circuit Rule 22-3. Section 2244(b)(3)(A) provides that *before* a second or successive habeas petition is filed in the district court, "the applicant shall move in the

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1 appropriate court of appeals for an order authorizing the district court to consider the
2 application.” Section 2244(b)(3)(A) thus creates a “gatekeeping” mechanism at the appellate
3 court for the consideration of second or successive applications in the district courts. *See Felker*
4 *v. Turpin*, 518 U.S. 651, 657 (1996). The court of appeals may authorize the filing of a second
5 or successive application for habeas relief only if it determines the application makes a prima
6 facie showing that the application satisfies the requirements set forth in 28 U.S.C. § 2244(b)(2).
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8 Based on the foregoing, this Court recommends that petitioner’s § 2254 petition be
9 transferred to the Ninth Circuit pursuant to 28 U.S.C. § 1631 and Circuit Rule 22-3(a). A
10 proposed order accompanies this Report and Recommendation.

11 DATED this 24th day of May, 2010.

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14 JAMES P. DONOHUE
15 United States Magistrate Judge
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